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## DEPARTMENT OF AGRICULTURE

### Food and Nutrition Service

#### 7 CFR Part 247

RIN 0584-AD33

#### Commodity Supplemental Food Program—Allocation of Administrative Funds

**AGENCY:** Food and Nutrition Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** This final rule amends Commodity Supplemental Food Program regulations to implement nondiscretionary provisions of the Farm Security and Rural Investment Act of 2002 affecting the allocation of administrative funds to State agencies. In accordance with that Act, using whatever funds are appropriated for the fiscal year to support the program, and any program funds remaining available from the preceding fiscal year, this rule requires the allocation of an administrative grant per assigned caseload slot, adjusted each year for inflation, to pay State and local agency administrative costs. This method of allocation provides States a specific amount of administrative funds to support each caseload slot assigned.

**DATES:** This rule will become effective on September 29, 2003. The statutory formula for determining the grant per assigned caseload slot for fiscal year 2003 will apply for the entire fiscal year. The formula for fiscal years 2004 through 2007 differs from that for 2003 and will apply to each of those years respectively.

**FOR FURTHER INFORMATION CONTACT:** Lillie F. Ragan, Assistant Branch Chief, Household Programs Branch, Food Distribution Division, Food and Nutrition Service, U.S. Department of Agriculture, Room 500, 3101 Park

Center Drive, Alexandria, Virginia 22302-1594, or telephone (703) 305-2662. Inquiries may also be sent via Internet to [Lillie.Ragan@FNS.USDA.GOV](mailto:Lillie.Ragan@FNS.USDA.GOV).

#### SUPPLEMENTARY INFORMATION:

##### Executive Order 12866

This final rule has been determined to be significant and was reviewed by the Office of Management and Budget under Executive Order 12866.

##### Public Law 104-4

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 104-4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, the Food and Nutrition Service (FNS) generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, or tribal governments, in the aggregate, or to the private sector, of \$100 million or more in any one year. When such a statement is needed for a rule, section 205 of the UMRA generally requires FNS to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, more cost-effective or least burdensome alternative that achieves the objectives of the rule.

This rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, and tribal governments or the private sector of \$100 million or more in any one year. Thus, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

##### Executive Order 12372

The program addressed in this action is listed in the Catalog of Federal Domestic Assistance under 10.565, and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials (7 CFR Part 3015, Subpart V, and final rule-related notices published at 48 FR 29114, June 24, 1983, and 49 FR 22676, May 31, 1984).

##### Federalism Summary Impact Statement

Executive Order 13132 requires Federal agencies to consider the impact

of their regulatory actions on State and local governments. Where such actions have federalism implications, agencies are directed to provide a statement for inclusion in the preamble to the regulations describing the agency's considerations in terms of the three categories called for under section (6)(b)(2)(B) of Executive Order 13132. The FNS has considered the impact of this rule on State and local governments and has determined that this rule does not have Federalism implications. This rule does not impose substantial or direct compliance costs on State and local governments. Therefore, under section 6(b) of the Executive Order, a federalism summary impact statement is not required.

##### Regulatory Impact Analysis

This rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act of 1980 (5 U.S.C. 601-612). The regulatory provisions contained in this rule will benefit State and local agencies by providing a stable level of funding to support administration of the program. Under the Farm Security and Rural Investment Act of 2002, State agencies will receive a grant per assigned caseload slot to pay for administrative program costs. The per caseload slot grant will be adjusted for inflation each year. Funding to support the program, including administrative grants, is discretionary. Therefore, an increase in program funds is not mandatory. However, if additional funds are not appropriated, the number of caseload slots allocated to each State will be reduced.

##### Executive Order 12988

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. The rule is intended to have preemptive effect with respect to any State or local laws, regulations, or policies which conflict with its provisions or which would otherwise impede its full implementation. This rule is not intended to have retroactive effect. Prior to any judicial action challenging the application of Commodity Supplemental Food Program (CSFP) rules, exhaustion of administrative remedies, as set out in 7 CFR 247.33, would be required.

### Paperwork Reduction Act

This final rule reflects no new information collection requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3507). The existing reporting and recordkeeping requirements for 7 CFR part 247, which were approved under OMB control number 0584-0293, will not change as a result of this rule.

### Government Paperwork Elimination Act

FNS is committed to compliance with the Government Paperwork Elimination Act (Pub. L. 105-277), which requires Government agencies to provide the public the option of submitting information or transacting business electronically to the maximum extent possible.

This action is published as a final rule without prior notice or public comment under authority of 5 U.S.C. 553(b)(3)(B). This final rule implements section 4201, a non-discretionary statutory provision of the Farm Security and Rural Investment Act of 2002, Pub. L. 107-171, by mandating the allocation of an administrative grant per assigned caseload slot, adjusted each year for inflation, to pay State and local agencies' administrative costs of the CSFP. Thus, the Department has determined in accordance with 5 U.S.C. 553(b)(3)(B) that notice of proposed rulemaking and opportunity for public comments are impracticable and contrary to the public interest. The provisions will become effective 30 days after publication in the **Federal Register**.

### Background

Through the CSFP, the Department of Agriculture's FNS provides commodities and administrative funds to participating State agencies, which, through local agencies, distribute a package of foods each month to participating pregnant, postpartum, and breastfeeding women, infants, children up to age 6, and seniors (age 60 or older). FNS utilizes funds provided in the CSFP appropriation and funds carried over from the previous year to assign caseload and allocate administrative funds to State agencies each year. State and local agencies serve participants in accordance with their assigned caseload limits, and utilize administrative funds to meet program costs, which may include costs of storage and distribution of foods, determination of eligibility, provision of nutrition education and other costs.

The Farm Security and Rural Investment Act of 2002 (2002 Act), Pub.

L. 107-171, which was enacted on May 13, 2002, amended the means by which the Department provides administrative funds to State agencies. Section 4201(b) of the 2002 Act amended section 5(a) of the Agriculture and Consumer Protection Act of 1973 (7 U.S.C. 612c *note*) to provide State agencies with a grant per assigned caseload slot to pay for administrative program costs. It also deleted the limitation of total administrative funding for the program, which before the deletion was limited to 20 percent of the program appropriation and of food funds carried over from the previous year.

Prior to the deletion of the 20 percent limit, as discussed above, State agencies received a portion of the total administrative funding equal to their share of total assigned caseload.

Thus, a State agency with a caseload assignment that was 10 percent of the total for all State agencies would have received funds totaling 10 percent of the total funds allocated. However, since the cost of food per caseload slot and related factors fluctuate from year to year while the 80/20 split between food funds and administrative funds remained constant, the actual amount of administrative funding available for each assigned caseload slot could change from year to year, having nothing to do with the State and local government price index.

In order to remedy the situation described above, Congress allotted specific amounts for CSFP administrative support in excess of the 20 percent limit, in the program appropriations legislation for each of fiscal years (FY) 2001 and 2002. In FY 2001, Congress allotted \$20,781,000 to meet administrative costs, and in FY 2002 allotted \$20,820,000. These administrative allocations allowed FNS to provide administrative support, on a per-caseload slot basis, of \$50.89 in FY 2001 and \$50.25 in FY 2002. This provided considerably more administrative funding for each caseload slot assigned than in previous years. However, administrative funding per slot continued to fluctuate from year to year.

Section 4201(b)(2) of the 2002 Act stipulates the per-caseload slot amounts State agencies are to receive in FY 2003, and for subsequent fiscal years. For FY 2003, the grant per assigned caseload slot is \$51.49, an amount equal to the per-caseload slot amount provided in FY 2001 (\$50.89), adjusted by the percentage change between:

(1) The value of the State and local government price index, as published by the Bureau of Economic Analysis of the Department of Commerce, for the

12-month period ending June 30, 2001; and

(2) The value of that index for the 12-month period ending June 30, 2002.

For subsequent fiscal years, the amount of the grant per assigned caseload slot is equal to the amount of the grant per assigned caseload slot for the preceding fiscal year, adjusted by the percentage change between:

(1) The value of the State and local government price index, as published by the Bureau of Economic Analysis of the Department of Commerce, for the 12-month period ending June 30 of the second preceding fiscal year; and

(2) The value of that index for the 12-month period ending June 30 of the preceding fiscal year.

FNS issued two memoranda to State Directors of CSFP which explained and implemented these changes to the means of allocating administrative funds to State agencies participating in CSFP. The first memorandum, dated July 24, 2002, explained generally the statutory change resulting in the method for calculating CSFP administrative funding based on the per caseload slot formula. The second memorandum, dated September 16, 2002, specifically calculated the legislatively mandated administrative grant assigned per caseload slot for FY 2003.

Regulatory provisions pertaining to the allocation of administrative funds to State agencies administering CSFP are described under 7 CFR 247.10(b). This rule revises subsections (b)(1), (b)(2), and (b)(3) of § 247.10 to reflect the new method of allocation of administrative funds. Subsection (b)(1) describes the allocation to the States of an administrative grant per assigned caseload slot, adjusted each year for inflation. Subsection (b)(2) describes the means of determining the amount of the per-caseload slot grant for FY 2003, and subsection (b)(3) codifies the means for determining the amounts for subsequent fiscal years, as set forth in the 2002 Act.

In accordance with the 2002 Act, the current language in subsections (b)(1), (b)(2), and (b)(3) which limits administrative funding to a percentage of total program funds, and describing the portion of the total that each State receives, has been deleted. The current language describing the separate allocation of administrative funds to support the distribution of surplus commodities provided to CSFP was rendered ineffective by legislation enacted previous to the enactment of the 2002 Act, and has also been deleted.

### List of Subjects in 7 CFR Part 247

Agricultural commodities, Food assistance programs, Infants and

children, Maternal and child health, Public assistance programs, nutrition, women, aged.

■ Accordingly, 7 CFR part 247 is amended as follows:

#### **PART 247—COMMODITY SUPPLEMENTAL FOOD PROGRAM**

■ 1. The authority citation for part 247 is revised to read as follows:

**Authority:** Sec. 5, Pub. L. 93–86, 87 Stat. 249, as added by Sec. 1304(b)(2), Pub. L. 95–113, 91 Stat. 980 (7 U.S.C. 612c note); sec. 1335, Pub. L. 97–98, 95 Stat. 1293 (7 U.S.C. 612c note); sec. 209, Pub. L. 98–8, 97 Stat. 35 (7 U.S.C. 612c note); sec. 2(8), Pub. L. 98–92, 97 Stat. 611 (7 U.S.C. 612c note); sec. 1562, Pub. L. 99–198, 99 Stat. 1590 (7 U.S.C. 612c note); sec. 101(k), Pub. L. 100–202; sec. 1771(a), Pub. L. 101–624, 101 Stat. 3806 (7 U.S.C. 612c note); sec. 402(a), Pub. L. 104–127, 110 Stat. 1028 (7 U.S.C. 612c note), Sec. 4201(b), Pub. L. 107–171.

■ 2. In § 247.10, paragraphs (b)(1), (b)(2), and (b)(3) are revised to read as follows:

#### **§ 247.10 Caseload assignment and administrative funding.**

\* \* \* \* \*

(b) Administrative Funding. \* \* \*

(1) FNS allocates to each State agency an administrative grant per assigned caseload slot, adjusted each year for inflation.

(2) For fiscal year 2003, the amount of the grant per assigned caseload slot is equal to the per-caseload slot amount provided in fiscal year 2001, adjusted by the percentage change between:

(i) The value of the State and local government price index, as published by the Bureau of Economic Analysis of the Department of Commerce, for the 12-month period ending June 30, 2001; and

(ii) The value of that index for the 12-month period ending June 30, 2002.

(3) For subsequent fiscal years, the amount of the grant per assigned caseload slot is equal to the amount of the grant per assigned caseload slot for the preceding fiscal year, adjusted by the percentage change between:

(i) The value of the State and local government price index, as published by the Bureau of Economic Analysis of the Department of Commerce, for the 12-month period ending June 30 of the second preceding fiscal year; and

(ii) The value of that index for the 12-month period ending June 30 of the preceding fiscal year.

\* \* \* \* \*

Dated: August 21, 2003.

**Eric M. Bost,**

*Under Secretary for Food, Nutrition, and Consumer Services.*

[FR Doc. 03–22021 Filed 8–27–03; 8:45 am]

**BILLING CODE 3410–30–P**

## **SMALL BUSINESS ADMINISTRATION**

### **13 CFR Part 120**

**RIN 3245–AE68**

#### **Business Loans and Development Company Loans**

**AGENCY:** Small Business Administration (SBA).

**ACTION:** Direct final rule.

**SUMMARY:** Statutory amendments to the Small Business Act require changes to SBA rules concerning maximum loan guaranty and gross loan amounts, percentages of financing which can be guaranteed by SBA, guarantee fees paid by lenders, real estate occupancy rules, and borrower subsidy recoupment fees. This direct final rule implements the statutory provisions.

**DATES:** This rule is effective October 14, 2003 without further action, unless adverse comment is received by September 29, 2003. If an adverse comment is received, SBA will publish a timely withdrawal of the rule in the **Federal Register**.

**ADDRESSES:** Written comments should be sent to LeAnn Oliver, Deputy Associate Administrator for Financial Assistance, Office of Financial Assistance, Small Business Administration, 409 Third Street SW., Washington, DC 20416. Comments also may be sent by e-mail to [leann.oliver@sba.gov](mailto:leann.oliver@sba.gov) or submitted electronically at <http://www.regulations.gov>.

**FOR FURTHER INFORMATION CONTACT:** Charles W. Thomas, Acting Director, Office of Loan Programs, Office of Financial Assistance, (202) 205–6656, [charles.thomas@sba.gov](mailto:charles.thomas@sba.gov).

**SUPPLEMENTARY INFORMATION:** The Small Business Reauthorization Act of 2000, Pub. L. 106–554, Appendix I—H.R. 3667, Titles II–III, 114 Stat. 2763A–681 to 689 (2000 Act) became effective on December 21, 2000. The Veterans Entrepreneurship and Small Business Development Act of 1999, Public Law 106–50, 113 Stat. 236, became effective August 17, 1999 (Veterans' Act). This direct final rule is necessary to amend SBA regulations to incorporate certain legislative changes made by the 2000 Act and the Veterans' Act.

Previously, SBA was authorized to guarantee no more than 80 percent of a loan if the gross amount of the loan was \$100,000 or less, and no more than 75 percent of a loan over that amount. Section 202 of the 2000 Act amends the 7(a) business loan program by authorizing SBA to guarantee up to 85 percent of a loan if the gross amount of

the loan is no more than \$150,000. Under the 2000 Act, the maximum SBA guaranty on a loan greater than \$150,000 is 75 percent except as otherwise authorized by law. To reflect these changes, SBA is amending § 120.210 of the regulations.

Section 203 of the 2000 Act increases the maximum amount that SBA may guarantee to a single borrower from \$750,000 to \$1 million. Section 203 provides that the gross amount of any one SBA guaranteed loan cannot exceed \$2 million. Previously, there was no limit on the maximum gross loan amount. SBA is amending § 120.151 of its regulations to implement these changes.

Section 205 of the 2000 Act imposes a subsidy recoupment fee on some borrowers with respect to certain SBA 7(a) guaranteed loans. A subsidy recoupment fee applies if a prepaid loan has a maturity of 15 years or more, the prepayment is voluntary, the amount of prepayment in the aggregate in any 12 month period is more than 25 percent of the outstanding balance of the loan in that period, and the prepayment is made within the first three years of the initial disbursement of the loan proceeds. The subsidy recoupment fee is paid to SBA and applies to the full amount of the prepayment, not just to the guaranteed portion of the prepayment, as follows: if a borrower prepays during the first year after initial disbursement, the prepayment charge is 5 percent of the amount of the prepayment; if a borrower prepays during the second year after initial disbursement, the prepayment charge is 3 percent of the amount of the prepayment; and if a borrower prepays during the third year after initial disbursement, the prepayment charge is 1 percent of the amount of the prepayment. SBA is adding a new § 120.223 to its regulations to reflect this statutory amendment.

Section 206 of the 2000 Act simplifies the calculation of the guaranty fee payable to SBA by a participating lender. This provision continues to allow a lender to pass this fee on to the borrower. Under the new simplified calculation for all loans with a maturity of over 12 months, if the total loan amount is \$150,000 or less, a lender must pay a guaranty fee equal to 2 percent of the SBA guaranteed portion, however, the lender may retain 25 percent of the fee. In addition, for all loans with a maturity of over 12 months, if the total loan amount is more than \$150,000, but not more than \$700,000, a lender must pay a guaranty fee of 3 percent of the SBA guaranteed portion, and if the total amount is more than \$700,000, a lender must pay a guaranty